

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KELLY BOLDING, and MICHAEL
MANFREDI, individually and on behalf of
a class of all others similarly situated,

Plaintiffs,

v.

BANNER BANK, a Washington Corporation,

Defendant.

No. C17- 0601RSL

DECLARATION OF RYAN HESS
IN OPPOSITION TO
PLAINTIFFS' PRE-DISCOVERY
MOTION FOR COLLECTIVE
ACTION CERTIFICATION
UNDER 29 U.S.C § 216(b) AND
TO SEND NOTICE TO THE
CLASS

Note on Motion Calendar:
September 1, 2017

I, Ryan Hess, declare as follows:

1. I am an attorney at the law firm of Davis Wright Tremaine LLP and counsel for Banner Bank in the above-captioned case. I am over the age of 18 years and am competent to testify to the facts stated in this Declaration. The following statements are based on my personal knowledge, and if called to testify as a witness, I could and would testify to them competently.

2. Earlier this year, Davis Wright Tremaine ("Davis Wright") attorneys acting under my supervision interviewed individuals who work or worked as loan officers (collectively "MLOs") for Banner Bank and/or AmericanWest Bank ("AWB"). The Davis

1 Wright interviewers were instructed that the only parties to the interviews were to be the
2 interviewee and the Davis Wright interviewer.

3 3. At the start of each interview, the Davis Wright interviewer was instructed
4 to read a prepared statement, which we call the "Who We Are" statement. Attached to this
5 declaration as Exhibit A is a true and correct copy of a blank version of the Who We Are
6 statement.

7 a. The Who We Are statements identified the interviewer as a Davis
8 Wright attorney or paralegal. It asked if the interviewee was represented by counsel and stated
9 that, if the MLO was represented, the interview would be terminated immediately. The
10 statements also informed MLOs that they had the right to retain their own attorney before
11 deciding whether to speak with the Davis Wright interviewer.

12 b. The Who We Are statements also disclosed the existence of this
13 litigation, the general nature of the claims, the fact that the interviewee was a potential
14 collective member, and that the interviewee's individual interests might be adverse to Banner
15 Bank's interests. The statements also informed the interviewee that, if he or she chose to sign a
16 declaration, the declaration might be filed as a public record with the Court.

17 c. The Who We Are statements continued that the interviewee's
18 participation in the interview was completely voluntary. The statements also made clear that the
19 interviewee would neither receive a benefit for participating, nor suffer any punishment for
20 declining to participate, in the interview.

21 d. The Davis Wright interviewers also were instructed to ask the
22 interviewee to sign a written copy of the Who We Are statement, regardless of whether the
23 interviewee chose to proceed with the interview, so that we would have a record showing that
24 the interviewee received the statement and that, if the interviewee chose to proceed with the
25 interview, the interviewee was doing so voluntarily and as a result of his or her own free will.
26
27

4. In addition, the Davis Wright interviewers were instructed that, before an interviewee signed a declaration, they should emphasize that the declaration is completely voluntary and that the interviewee has no obligation to sign it.

5. I have reviewed the declarations that Banner Bank has submitted with its opposition. Those declarations cover a total of six current or former AWB and/or Banner Bank MLOs (including one who is now a manager). Since April 2014, those individuals worked in a total of eight different branch locations across three states. In addition, the MLOs reported to at least seven different direct managers at AWB and/or Banner Bank since April 2014.

6. Attached to this Declaration as Exhibit B is a true and correct copy of excerpts from Plaintiff Kelly Bolding's deposition in a prior case entitled *Erickson, et al. v. AmericanWest Bank*, No. 15-2-01976-7 SEA, King County Superior Court.

7. Attached to this Declaration as Exhibit C is a redline showing Banner Bank's proposed changes to the Plaintiffs' draft collective certification notice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Seattle, Washington, August 21, 2017.

By Ryan Hess
Ryan Hess

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on August 21, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 21st day of August, 2017.

By s/ Kenneth E. Payson
Kenneth E. Payson, WSBA # 26369